

AMENDED IN SENATE SEPTEMBER 1, 2005

AMENDED IN SENATE JULY 5, 2005

AMENDED IN SENATE JUNE 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1227

Introduced by Assembly Member Torrico

February 22, 2005

An act to amend ~~Sections 65008 and 65858~~, *repeal, and add Section 65008* of the Government Code, relating to housing discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1227, as amended, Torrico. Housing: discrimination.

~~(1) The~~

The Planning and Zoning Law prohibits a local agency from prohibiting or discriminating against, among other things, a residential development, as defined, including a multifamily residential project, or emergency shelter because of specified reasons that include, in whole or in part, the method of financing or the occupancy of the development by persons of low, moderate, or middle income.

This bill, *until January 1, 2009*, would additionally prohibit those actions from being taken because the residential development consists of a continuing care retirement community ~~and~~, would expand the discrimination prohibited by these provisions to include the source of financing, subsidy, or other assistance or the intended occupancy of the development or shelter by persons of very low ~~income~~.

~~This bill income, and~~ would require that, if a court finds that if the action of a city, county, city and county, or other governmental agency

violates these provisions, the court shall award the plaintiff reasonable attorney's fees and costs of suit, except as specified.

~~(2) The Planning and Zoning Law also authorizes a city, including a charter city, a county, or a city and county under specified conditions to adopt for a period of 45 days as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, the planning commission, or the planning department is considering or studying or intends to study within a reasonable time. That law authorizes prescribed extensions of the ordinance, subject to specified conditions.~~

~~This bill would require a court to award a plaintiff reasonable attorney's fees and costs of suit, except as specified, if the court finds that an action of a city, county, or city and county to enact or extend an interim ordinance that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing is in violation of these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65008 of the Government Code is
2 amended to read:
3 65008. (a) Any action pursuant to this title by any city,
4 county, city and county, or other local governmental agency in
5 this state is null and void if it denies to any individual or group of
6 individuals the enjoyment of residence, landownership, tenancy,
7 or any other land use in this state because of any of the following
8 reasons:
9 (1) The race, sex, color, religion, ethnicity, national origin,
10 ancestry, lawful occupation, familial status, disability, or age of
11 the individual or group of individuals. For purposes of this
12 section, both of the following definitions apply:
13 (A) "Familial status" as defined in Section 12955.2.
14 (B) "Disability" as defined in Section 12955.3.
15 (2) The method of financing of any residential development of
16 the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income.

(b) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing.

(B) Because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the owners or intended occupants of the residential development or emergency shelter.

(C) Because the development or shelter is intended for occupancy by persons and families of very low, low, and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) Notwithstanding Section 65589.5, the discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter due to either of the following:

(A) The method or source of financing, subsidy, or other assistance.

(B) The occupancy or intended occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of very low, low, and moderate income.

(c) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of very low, low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site

1 development and property line requirements, building setback
2 requirements, or vehicle parking requirements that reduce
3 development costs of these developments.

4 (f) "Residential development," as used in this section, means a
5 single-family residence or a multifamily residence, including
6 manufactured homes, as defined in Section 18007 of the Health
7 and Safety Code, and a continuing care retirement community, as
8 defined in paragraph (11) of subdivision (c) of Section 1771 of
9 the Health and Safety Code.

10 (g) If a court finds that an action of a city, county, city and
11 county, or other local governmental agency violates this section,
12 the court shall award the plaintiff reasonable attorney's fees and
13 costs of suit, except under extraordinary circumstances in which
14 the court finds that awarding fees would not further the purposes
15 of this section.

16 (h) This section shall apply to chartered cities.

17 (i) The Legislature finds and declares that discriminatory
18 practices that inhibit the development of housing for persons and
19 families of very low, low, moderate, and middle income, or
20 emergency shelters for the homeless, are a matter of statewide
21 concern.

22 (j) *This section shall remain in effect only until January 1,*
23 *2009, and as of that date is repealed, unless a later enacted*
24 *statute, that is enacted before January 1, 2009, deletes or extends*
25 *that date.*

26 *SEC. 2. Section 65008 is added to the Government Code, to*
27 *read:*

28 *65008. (a) Any action pursuant to this title by any city,*
29 *county, city and county, or other local governmental agency in*
30 *this state is null and void if it denies to any individual or group of*
31 *individuals the enjoyment of residence, landownership, tenancy,*
32 *or any other land use in this state because of any of the following*
33 *reasons:*

34 *(1) The race, sex, color, religion, ethnicity, national origin,*
35 *ancestry, lawful occupation, familial status, disability, or age of*
36 *the individual or group of individuals. For purposes of this*
37 *section, both of the following definitions apply:*

38 *(A) "Familial status" as defined in Section 12955.2.*

39 *(B) "Disability" as defined in Section 12955.3.*

1 (2) *The method of financing of any residential development of*
2 *the individual or group of individuals.*

3 (3) *The intended occupancy of any residential development by*
4 *persons or families of low, moderate, or middle income.*

5 (b) (1) *No city, county, city and county, or other local*
6 *governmental agency shall, in the enactment or administration of*
7 *ordinances pursuant to this title, prohibit or discriminate against*
8 *any residential development or emergency shelter for any of the*
9 *following reasons:*

10 (A) *Because of the method of financing.*

11 (B) *Because of the race, sex, color, religion, ethnicity, national*
12 *origin, ancestry, lawful occupation, familial status, disability, or*
13 *age of the owners or intended occupants of the residential*
14 *development or emergency shelter.*

15 (C) *Because the development or shelter is intended for*
16 *occupancy by persons and families of low and moderate income,*
17 *as defined in Section 50093 of the Health and Safety Code, or*
18 *persons and families of middle income.*

19 (D) *Because the development consists of a multifamily*
20 *residential project that is consistent with both the jurisdiction's*
21 *zoning ordinance and general plan as they existed on the date the*
22 *application was deemed complete, except that a project shall not*
23 *be deemed to be inconsistent with the zoning designation for the*
24 *site if that zoning designation is inconsistent with the general*
25 *plan only because the project site has not been rezoned to*
26 *conform with a more recently adopted general plan.*

27 (2) *The discrimination prohibited by this subdivision includes*
28 *the denial or conditioning of a residential development or shelter*
29 *because of, in whole or in part, (A) the method of financing or*
30 *(B) the occupancy of the development by persons protected by*
31 *this subdivision, including, but not limited to, persons and*
32 *families of low and moderate income.*

33 (c) *For the purposes of this section, "persons and families of*
34 *middle income" means persons and families whose income does*
35 *not exceed 150 percent of the median income for the county in*
36 *which the persons or families reside.*

37 (d) (1) *No city, county, city and county, or other local*
38 *governmental agency may impose different requirements on a*
39 *residential development or emergency shelter that is subsidized,*
40 *financed, insured, or otherwise assisted by the federal or state*

1 government or by a local public entity, as defined in Section
2 50079 of the Health and Safety Code, than those imposed on
3 nonassisted developments, except as provided in subdivision (e).
4 The discrimination prohibited by this subdivision includes the
5 denial or conditioning of a residential development or shelter
6 based in whole or in part on the fact that the development is
7 subsidized, financed, insured, or otherwise assisted as described
8 in this paragraph.

9 (2) No city, county, city and county, or other local
10 governmental agency may, because of the race, sex, color,
11 religion, ethnicity, national origin, ancestry, lawful occupation,
12 familial status, disability, or age of the intended occupants, or
13 because the development is intended for occupancy by persons
14 and families of low, moderate, or middle income, impose
15 different requirements on these residential developments than
16 those imposed on developments generally, except as provided in
17 subdivision (e).

18 (e) Notwithstanding subdivisions (a) to (d), inclusive, nothing
19 in this section or this title shall be construed to prohibit either of
20 the following:

21 (1) The County of Riverside from enacting and enforcing
22 zoning to provide housing for older persons, in accordance with
23 state or federal law, if that zoning was enacted prior to January
24 1, 1995.

25 (2) Any city, county, or city and county from extending
26 preferential treatment to residential developments or emergency
27 shelters assisted by the federal or state government or by a local
28 public entity, as defined in Section 50079 of the Health and
29 Safety Code, or other residential developments or emergency
30 shelters intended for occupancy by persons and families of low
31 and moderate income, as defined in Section 50093 of the Health
32 and Safety Code, or persons and families of middle income, or
33 agricultural employees, as defined in subdivision (b) of Section
34 1140.4 of the Labor Code, and their families. This preferential
35 treatment may include, but need not be limited to, reduction or
36 waiver of fees or changes in architectural requirements, site
37 development and property line requirements, building setback
38 requirements, or vehicle parking requirements that reduce
39 development costs of these developments.

1 (f) “Residential development,” as used in this section, means
2 a single-family residence or a multifamily residence, including
3 manufactured homes, as defined in Section 18007 of the Health
4 and Safety Code.

5 (g) This section shall apply to chartered cities.

6 (h) The Legislature finds and declares that discriminatory
7 practices that inhibit the development of housing for persons and
8 families of low, moderate, and middle income, or emergency
9 shelters for the homeless, are a matter of statewide concern.

10 (i) This section shall become operative on January 1, 2009.

11 SEC. 2. Section 65858 of the Government Code is amended
12 to read:

13 ~~65858. (a) Without following the procedures otherwise~~
14 ~~required prior to the adoption of a zoning ordinance, the~~
15 ~~legislative body of a county, city, including a charter city, or city~~
16 ~~and county, to protect the public safety, health, and welfare, may~~
17 ~~adopt as an urgency measure an interim ordinance prohibiting~~
18 ~~any uses that may be in conflict with a contemplated general~~
19 ~~plan, specific plan, or zoning proposal that the legislative body,~~
20 ~~planning commission or the planning department is considering~~
21 ~~or studying or intends to study within a reasonable time. That~~
22 ~~urgency measure shall require a four-fifths vote of the legislative~~
23 ~~body for adoption. The interim ordinance shall be of no further~~
24 ~~force and effect 45 days from its date of adoption. After notice~~
25 ~~pursuant to Section 65090 and public hearing, the legislative~~
26 ~~body may extend the interim ordinance for 10 months and 15~~
27 ~~days and subsequently extend the interim ordinance for one year.~~
28 ~~Any extension shall also require a four-fifths vote for adoption.~~
29 ~~Not more than two extensions may be adopted.~~

30 ~~(b) Alternatively, an interim ordinance may be adopted by a~~
31 ~~four-fifths vote following notice pursuant to Section 65090 and~~
32 ~~public hearing, in which case it shall be of no further force and~~
33 ~~effect 45 days from its date of adoption. After notice pursuant to~~
34 ~~Section 65090 and public hearing, the legislative body may by a~~
35 ~~four-fifths vote extend the interim ordinance for 22 months and~~
36 ~~15 days.~~

37 ~~(c) The legislative body shall not adopt or extend any interim~~
38 ~~ordinance pursuant to this section unless the ordinance contains~~
39 ~~legislative findings that there is a current and immediate threat to~~
40 ~~the public health, safety, or welfare, and that the approval of~~

1 additional subdivisions, use permits, variances, building permits,
2 or any other applicable entitlement for use which is required in
3 order to comply with a zoning ordinance would result in that
4 threat to public health, safety, or welfare. In addition, any interim
5 ordinance adopted pursuant to this section that has the effect of
6 denying approvals needed for the development of projects with a
7 significant component of multifamily housing may not be
8 extended except upon written findings adopted by the legislative
9 body, supported by substantial evidence on the record, that all of
10 the following conditions exist:

11 (1) The continued approval of the development of multifamily
12 housing projects would have a specific, adverse impact upon the
13 public health or safety. As used in this paragraph, a “specific,
14 adverse impact” means a significant, quantifiable, direct, and
15 unavoidable impact, based on objective, identified written public
16 health or safety standards, policies, or conditions as they existed
17 on the date that the ordinance is adopted by the legislative body.

18 (2) The interim ordinance is necessary to mitigate or avoid the
19 specific, adverse impact identified pursuant to paragraph (1).

20 (3) There is no feasible alternative to satisfactorily mitigate or
21 avoid the specific, adverse impact identified pursuant to
22 paragraph (1) as well or better, with a less burdensome or
23 restrictive effect, than the adoption of the proposed interim
24 ordinance.

25 (d) Ten days prior to the expiration of that interim ordinance
26 or any extension, the legislative body shall issue a written report
27 describing the measures taken to alleviate the condition which
28 led to the adoption of the ordinance.

29 (e) When an interim ordinance has been adopted, every
30 subsequent ordinance adopted pursuant to this section, covering
31 the whole or a part of the same property, shall automatically
32 terminate and be of no further force or effect upon the
33 termination of the first interim ordinance or any extension of the
34 ordinance as provided in this section.

35 (f) Notwithstanding subdivision (e), upon termination of a
36 prior interim ordinance, the legislative body may adopt another
37 interim ordinance pursuant to this section provided that the new
38 interim ordinance is adopted to protect the public safety, health,
39 and welfare from an event, occurrence, or set of circumstances

1 different from the event, occurrence, or set of circumstances that
2 led to the adoption of the prior interim ordinance.

3 (g) If a court finds that an action of a city, county, or city and
4 county to enact or extend an interim ordinance that has the effect
5 of denying approvals needed for the development of projects
6 with a significant component of multifamily housing is in
7 violation of this section, the court shall award the plaintiff
8 reasonable attorney's fees and costs of suit, except under
9 extraordinary circumstances in which the court finds that
10 awarding fees would not further the purposes of this section.

11 (h) For purposes of this section, "development of multifamily
12 housing projects" does not include the demolition, conversion,
13 redevelopment, or rehabilitation of multifamily housing that is
14 affordable to lower income households, as defined in Section
15 50079.5 of the Health and Safety Code, or that will result in an
16 increase in the price or reduction of the number of affordable
17 units in a multifamily housing project.

18 (i) For purposes of this section, "projects with a significant
19 component of multifamily housing" means projects in which
20 multifamily housing consists of at least one-third of the total
21 square footage of the project.